



Making San Francisco Bay Better

PRESENTATION FOR NORTHERN CALIFORNIA WORKSHOP ON PETROLEUM INFRASTRUCTURE BEST PERMITTING PRACTICES

February 14, 2005

San Francisco Bay Conservation and Development Commission Authority and Permitting

Introduction and Background. In 1965 the California Legislature created the 27-member San Francisco Bay Conservation and Development Commission (BCDC) in response to broad public concern over the future of the Bay. The McAteer-Petris Act, BCDC's enabling legislation, required BCDC to prepare "a comprehensive and enforceable plan for the conservation of San Francisco Bay and the development of its shoreline." In 1969, BCDC submitted the completed *San Francisco Bay Plan* to the Governor and the Legislature. The McAteer-Petris Act was subsequently amended to give the *Bay Plan* the force of law.

The law directs BCDC to:

- Regulate through a permit process all filling and dredging in San Francisco Bay (which includes San Pablo and Suisun Bays, sloughs and certain creeks and tributaries that are part of the Bay system, salt ponds and certain other areas that have been diked-off from the Bay).
- Protect the Suisun Marsh, the largest remaining wetland in California, by administering the Suisun Marsh Preservation Act in cooperation with local governments.
- Regulate through a permit process new development within the first 100 feet inland from the Bay to ensure that maximum feasible public access to the Bay is provided.
- Minimize pressures to fill the Bay by ensuring that the limited amount of shoreline area suitable for high priority water-oriented uses is reserved for ports, water-related industries, water-oriented recreation, airports and wildlife areas.
- Pursue an active planning program to study Bay issues so that Commission plans and policies are based upon the best available scientific and current information.
- Administer the federal Coastal Zone Management Act within the San Francisco Bay segment of the California coastal zone to ensure that federal activities reflect Commission policies.
- Participate in the regionwide state and federal program to prepare and implement a Long Term Management Strategy (LTMS) for dredging and dredge material disposal in San Francisco Bay.
- Participate in California's oil spill prevention and response planning program.
- Designate areas within its jurisdiction that are unsuitable for power plants and participate in the Energy Commission's siting process for power plants and related facilities.

Causes of Petroleum Infrastructure Development Constraints. In response to the California Energy Commission's (CEC) inquiries into the causes of the petroleum industry infrastructure and development constraints, BCDC staff has outlined BCDC's primary functions in relation to petroleum industry operations and development. BCDC plays a major role in regulation and oversight of the petroleum industry within the San Francisco Bay and its shoreline. However, as a state agency with regional authority, BCDC's procedures and jurisdiction are different than a state agency's, like the CEC, and they differ from local government ordinances and procedures. As described below, BCDC does not usually have a significant role as a lead agency under the California Environmental Quality Act (CEQA). Additionally, BCDC has no legal basis for granting or denying permits in its jurisdiction based on environmental justice issues. Nonetheless, BCDC is sensitive to environmental justice and addresses environmental justice primarily through its authority to require maximum feasible public access to the Bay shoreline consistent with a proposed project.

Marine facilities within BCDC's jurisdiction include 26 marine terminals accommodating approximately 3,300 oil transfers per year. Additionally, there are approximately 650 tanker arrivals and over 3,000 deep draft vessel arrivals in San Francisco Bay every year.

BCDC plays an important role in four primary capacities related to petroleum industry operations and development in the San Francisco Bay area: (1) by designating priority use areas for water-related industry in the *San Francisco Bay Plan*; (2) by planning for and processing permits for dredging near marine terminals; (3) by issuing permits for the construction, operation, and repair of marine terminals and pipelines; and (4) by participating in the Oil Spill Prevention and Response program and the Harbor Safety Committee. These issues are addressed through long-range planning efforts and processing permits. The majority of Commission permits for the petroleum industry are for dredging projects near marine terminals. BCDC clearly recognizes the importance of the petroleum industry in the San Francisco Bay area and has successfully worked with the industry to plan for future development, expedite permit processing, and protect San Francisco Bay.

Priority Use Areas for Water-Related Industry. Pursuant to the McAteer-Petris Act and policies in the *San Francisco Bay Plan*, BCDC uses its regulatory authority to prevent these areas from being developed for uses other than water-related industries. BCDC's *Bay Plan* findings recognize that: (a) certain industries, defined as water-related industries, "require a waterfront location on navigable, deep water to receive raw materials and distribute finished products by ship, thereby gaining a significant transportation cost advantage;" and (b) "the navigable, deep water sites around the Bay are a unique and limited resource and should be protected for uses requiring deep draft ship terminals...." Consequently, the *Bay Plan* designates significant acreage along the Bay shoreline for priority uses, such as water-related industries that support oil refineries and terminals. The *Bay Plan* policies require that "Sites designated for both water-related industry and port uses in the Bay Plan should be reserved for those industries and port uses that require navigable, deep water for receiving materials or shipping products by water in order to gain a significant transportation cost advantage."

The priority use areas designated for water-related industry are located primarily in the areas covered by *Bay Plan* Maps 2, 3, and 4 below and include all the oil refineries around San Francisco Bay.

Dredging. The Bay refineries receive and ship product from marine terminals that require regular dredging. Pursuant to the laws BCDC administers, permits are required for any dredging and dredged material disposal in San Francisco Bay. BCDC has worked with the petroleum industry and other frequent dredgers to ensure that dredging permits are processed expeditiously. Our law requires that BCDC respond within 30 days of the submittal of a permit application regarding any additional information needed to complete the application, and act on all complete permit applications within 90 days of their filing or the project is automatically granted. Our records show that the average time for our staff to respond with a “30-day letter” to dredging permit applicants for refineries has been 24 days, and BCDC has issued dredging and dredged material disposal permits an average of 18.5 days after they have been filed as complete. Thus, our staff is acting far quicker than required under state law, even though dredging permit issuance is complicated by issues of chemical and biological testing of sediments and alternative analyses for disposal locations.

On the planning level, BCDC has joined with the other state and federal agencies that regulate dredging and disposal in the Bay to prepare a joint Long Term Management Strategy (LTMS) for Bay dredging and dredged material disposal. The LTMS process has brought the federal and state agencies that regulate dredging together to provide a predictable and uniform, multi-agency process and blueprint for dredging and dredge material disposal in the Bay. This policy approach has resolved the significant controversies that beset Bay dredging projects in the 1990s. The LTMS recognizes the need to dredge channels and berths for petroleum terminals and other port facilities, and for the disposal of dredged material in a manner that is protective of the Bay environment.

Finally, the LTMS agencies (the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, San Francisco Bay Regional Water Quality Control Board, and BCDC) have established a Dredged Material Management Office (DMMO) to further coordinate the processing of state and federal dredging permit processing. The DMMO has adopted a common application form that is used by five agencies and established a single point of contact for dredgers and serves as a “one-stop-shop” to expedite dredging projects while ensuring environmental protection.

Oil Spill Prevention and Response. Because waters of the Bay are confined, the currents very strong, and the area is often subject to strong winds, damage from oil spills to the Bay's natural and cultural resources can be significant. BCDC participates in a coordinated effort among state and federal agencies to ensure that San Francisco Bay resources are protected from oil spills. BCDC's coordination with other agencies in oil spill prevention and response also ensures that its policies and processes for providing a high level of environmental protection are consistent with the other federal and state agencies and provide a high level of uniformity and predictability to the petroleum industry.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act mandates that BCDC assist the Administrator of the Department of Fish and Game - Office of Spill Prevention and Response (OSPR) in coordinating with other state and federal agencies. BCDC participates in the State Interagency Oil Spill Committee, the Harbor Safety Committee of the San Francisco Bay Region and its work groups, the U.S. Coast Guard's San Francisco Bay-Delta Area Committee and the OSPR Technical Advisory Committee. BCDC also participates in studies and drills with the petroleum industry and other agencies for improving contingency plans and spill response, and monitors Office of Emergency Response spill reports. During spill response operations, BCDC staff consults with and assists OSPR, the Coast Guard and the oil spill responsible party, particularly as BCDC permitting may be involved.

California Environmental Quality Act (CEQA). Typically, BCDC is a responsible agency under CEQA responsible for reviewing and commenting on CEQA documents and the Corps of Engineers is normally the lead agency on dredging projects where federal Environmental Impact Statements are required. The State Lands Commission is almost always the lead agency for projects related to marine terminals. In the unusual circumstances where BCDC is the lead agency under CEQA, BCDC is required to prepare an Environmental Assessment, which is a CEQA-equivalent document. The Environmental Assessment for a project is incorporated into the staff summary and circulated for public review and comments thirty days prior to BCDC's public hearing.

Environmental Justice. BCDC has no legal authority to place conditions on permits pertaining to environmental justice or deny permits based on environmental justice issues. However, the Commission requested and received a briefing on environmental justice issues from the state Office of Planning and Research. Subsequently, BCDC has adopted as an agency objective and a strategic plan goal that the staff will provide the Commission with an analysis of environmental justice issues in appropriate planning and regulatory reports. BCDC has designated certain staff members to receive training and act as consultants to the staff on environmental justice issues for regulatory and planning projects. Through these efforts BCDC has established processes in its regulatory and planning divisions to ensure that decisions do not disproportionately impact low-income and minority areas and that project benefits can be recognized in those areas and are not diverted to wealthier areas.

San Francisco Bay Plan Maps

**Showing Designated Priority Use Areas for Water-Related Industry
(Maps 2-4 Attached)**



